(4)

Case No. 96-1957

Supreme Court U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1996

PAUL JENNINGS HILL, *Petitioner,*

v.

STATE OF FLORIDA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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28 pp

QUESTION PRESENTED

The petition for writ of certiorari presents the following question:

> Whether Hill's Sixth and Fourteenth Amendment rights to counsel were violated when the judge knew Hill's only defense on two counts of premeditated murder was the affirmative defense of justification, but failed to inquire if Hill had any knowledge of how to present that justification defense which required extensive, legal research in order to proffer evidence sufficient to establish the factual predicate, by the skillful use of compulsory process, to prove that complex intricate defense, and whether that failure to inquire violated Faretta v. California, 422 U.S. 806 (1978), which requires a waiver of the right to counsel must be "voluntarily and intelligently" made, Id. at 807; "an intelligent and knowing", waiver, Id. at 809; a "knowing and intelligent" waiver, Id. at 812; the defendant must "competently and intelligently waive his constitutional right to the assistance of counsel", Id. at 814; he must "knowingly and intelligently" waive that right to counsel, Id. at 835, and in addition, the judge failed to follow the more stringent Florida Rule 3.111(d), which requires that:
>
> > (2) a defendant shall not be deemed to have waived the assistance of counsel until . . . a thorough inquiry has been made

> into both the accused's comprehension . . . and . . . capacity to make an intelligent and understanding waiver

and:

> (3) No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of . . . the nature or complexity of the case . . . [Emphasis added],

particularly where the State filed its motion in limine to preclude the necessity/justification defense on October 14, 1994, which, on October 24, 1994 when set for oral argument, the following occurred within minutes of each other: 1) the State handed its brief to the judge and to Hill in open court, 2) Hill moved for counsel to orally argue to which the State objected, and the judge sustained the State's objection, 3) the State argued its motion which Hill was unable to argue, 4) the judge granted the motion in limine, following which, Hill, at trial, asked no voir dire questions, objected to no voir dire questions asked by the State, waived both of his opening arguments and final closing argument, failed to cross-examine any witnesses, offered no witnesses, failed to offer any exhibits, failed to object to any exhibits, made no requests to charge, took no exceptions to the charge, and finally made a meaningless 67 word comment which resulted in a verdict of

two death sentences against Hill, amount to a violation of Hill's Sixth and Fourteenth Amendment rights?

Respondent, State of Florida, restates this question as follows:

I. Whether this Court, assuming that jurisdiction exists, should grant certiorari to review the decision of the Supreme Court of Florida below, in that the court resolved the claim asserted in regard to self-representation in accordance with this Court's precedents?

II. Whether this Court, assuming that jurisdiction exists, should grant certiorari to review the decision of the Supreme Court of Florida below, in that the court resolved the claim asserted in regard to the defenses of "necessity" or "justification" in accordance with the precedents of this Court, as well as all other courts to consider the matter?

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Case No. 96-1957

IN THE
SUPREME COURT OF THE UNITED STATES
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PAUL JENNINGS HILL, *Petitioner*,

v.

STATE OF FLORIDA, *Respondent*.

OPINION BELOW

The opinion below is reported at 688 So.2d 901, and a copy of the opinion is included in the Appendix to the Petition for Writ of Certiorari [Pet. App. at A1-A24a]. Petitioner's counsel has utilized the "Decisions Below" section of the petition (Petition at 2-4), as a vehicle for criticism of the various rulings of the Florida courts. Respondent contends that such is inappropriate, and that all argumentative portions of that section must be disregarded.

JURISDICTION

Petitioner's counsel has likewise utilized this portion of the petition to improperly present argument, and Respondent accepts only the statement that jurisdiction has been sought pursuant to 28 U.S.C. §1257. Further, as will be argued more fully *infra*, Respondent contends that no jurisdiction lies to entertain this petition, in that it has not been authorized by

Petitioner Paul Hill, and Hill's counsel lacks authority or standing to maintain this action in the absence of his client's consent.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's counsel contends that the Sixth and Fourteenth Amendments to the Constitution of the United States are implicated, as is Article I, §16(a) of the Florida Constitution. Hill's counsel likewise maintains that two Florida Statutes, §§776.012, Fla.Stat. (1993), and 924.141(5)(i), Fla.Stat. (1993), are implicated, as is Florida Rule of Criminal Procedure 3.111(d).

STATEMENT OF THE CASE

Respondent cannot accept the Statement of the Case set forth by Hill's counsel (Petition at 7-17), which is argumentative in the extreme and is not a balanced recitation of Hill's litigation below, and the manner in which such was resolved in the state courts. Accordingly, the following is substituted:

(A) Statement Of The Facts

The instant petition does not contain any formal Statement of the Facts. Respondent would set forth the following, from the opinion below:

> Early on the morning of July 29, 1994, Hill went to the Ladies Center in Pensacola, Florida, where he had been protesting against abortion for six months, and waited outside. About one

> hour later, a pick-up truck driven by James Herman Barrett, also containing his wife June Griffith Barrett and Dr. John Bayard Britton, arrived at the Center. The Barretts volunteered at the Center on the last Friday of every month. On those days, they met Dr. Britton at the airport and escorted him to the Ladies Center, which he visited every Friday to perform legal abortions. As the truck entered the parking lot, Hill was standing in the middle of the driveway. He moved to the side, allowing the truck to pass him. As the truck drove by, it came within several feet of Hill, so that he was able to see the truck's occupants.
>
> James Barrett parked the truck near the steps of the Center. As Barrett got out of the truck, Hill shot and killed him. Hill also shot and wounded June Barrett. He then moved closer to the truck before shooting and killing Dr. Britton. Hill was arrested shortly thereafter while walking away from the Center.

Hill, 688 So.2d at 902-3 [Pet. App at A2-A3].

(B) How Any Federal Question Was Raised And Decided Below

(i) The Faretta Point

Paul Hill was indicted on August 9, 1994, on two counts of premeditated murder, one count of attempted murder, and one count of shooting into an occupied vehicle, and the Office of the Public Defender was appointed to represent him.

On September 26, 1994, that office filed a motion to withdraw, contending that Hill had expressed the desire to represent himself, and further requesting that a hearing be held in accordance with Faretta v. California, 422 U.S. 806 (1975). At this time, defense counsel stated that he had advised Hill that the State would be seeking the death penalty, and also affirmatively stated that he did not see any basis to challenge Hill's mental competency or to have him psychiatrically examined (R 25-6).

The formal Faretta hearing commenced the next day. At this time, Hill stated that it was his desire to represent himself, with or without standby counsel (R 48-9). Hill affirmed that he understood that the Assistant Public Defender presently representing him was experienced in capital cases, but stated that representing himself would be in his best interest (R 52-3). Hill reaffirmed that he understood that he faced the death penalty as to the murder charges, as well as a possible life sentence on the charge of attempted murder, and told the court that, while he knew the legal system to be complex, he felt that he "understood enough" (R 55-6). Hill also stated that he understood that there were disadvantages in representing himself, including the fact that he was presently incarcerated, but stated that he felt that he understood enough about the rules of criminal procedure and the rules of substantive law to be able to represent himself (R 56).

The state circuit judge questioned Hill as to his age, marital status, education and health, and also inquired as to any prior instances of self-representation; as to his mental health, Hill averred that he had never suffered from any mental problem and was not currently taking any medication (R 64-5). The state court judge specifically questioned Hill as to his understanding of the fact that he would be held to the same standards as an attorney, should he represent himself, and that

he would likewise be subject to the same statutes and rules (R 72-4. The prosecutor also questioned Hill, and the following exchange took place:

> MR. MURRAY: There's a lot of disadvantages [to self-representation], the Court has gone through kind of a laundry list?
>
> THE DEFENDANT: Yes, sir.
>
> MR. MURRAY: One of those disadvantages might be that you would want to ask a question or to present a defense. Do you understand that if you do not know how to lay a foundation, that is to say, to ask the right series of questions, if I stand up and object and the Court sustains it, that you may be essentially thwarted in your efforts to try to move forward in the particular area? Do you understand that?
>
> THE DEFENDANT: Yes.
>
> MR. MURRAY: Do you understand -- at least I understand, I want to be sure that you do, the trial judge had indicated very clearly to you that he will treat you the same as he does any other lawyer that appears in front of him?
>
> THE DEFENDANT: That's been made clear to me. I understand that.
>
> MR. MURRAY: You recognize that is a substantial disadvantage?
>
> THE DEFENDANT: Yes, I understand that.

[Pet. App. at A120-1].

The prosecutor also asked Hill if he would abide by the court's rulings, insofar as the conduct of the trial was concerned, and when Hill replied in the affirmative, the following took place:

> MR. MURRAY: In the event that you wanted to advance a proposition and there was an objection to that and the Judge sustained it, based upon his legal ruling, do you understand that you would have to abide by that ruling even though you may feel that it conflicts with your views of glorifying God?
>
> THE DEFENDANT: Yeah, I understand that.
>
> MR. MURRAY: Are you willing to do that?
>
> THE DEFENDANT: Yes, I am willing to do that.

[Pet. App. at 135].

The state court judge took the matter under advisement, and, on September 30, 1994, rendered his order expressly finding Hill capable of waiving the right to counsel, and further finding that such waiver had been knowingly and intelligently made; the Office of the Public Defender was appointed "standby" counsel. In pertinent part, the order stated:

> The Defendant has filed through his attorney a motion to represent himself at trial. In determining whether his decision to represent himself is intelligently and knowingly reached,

> the Court has heard testimony from Mr. Hill first as to his present and past health and physical condition, his emotional and mental health, stability, age and education level. This Court need to reach the merits of the reasons upon which Mr. Hill wishes to represent himself. This Court finds the Defendant, Paul Jennings Hill, to be confident, competent, articulate and intelligent, well educated and with appropriate demeanor for the courtroom setting and a more than adequate ability to express himself.
>
> This Court has discussed with Mr. Hill the overwhelming disadvantage of self-representation, and the complexity of the discovery process. Mr. Hill has been advised of his right to private or appointed counsel and asserts that he wishes absolutely to represent himself at the trial proceedings.
>
> Although the Defendant has not previously represented himself in either civil or criminal proceedings, this Court observes that he has the ability to understand legal concepts and the Rules of Criminal Procedure. Mr. Hill advises the Court that should his motion be granted to represent himself, he has available a law library at the Escambia County Jail.

[Pet. App. at A30-1].

On October 13, 1994, the state trial court held a "supplemental" Faretta hearing, noting that in the interim since the last hearing, Hill had represented himself in federal court;

Hill stated that he wished to continue to represent himself, and further stated that he would consult standby counsel for guidance as necessary (R 100-103). At a subsequent hearing on October 24, 1994, Hill again reaffirmed his wish to represent himself *pro se*, and the court inquired again, and received a similar answer, at the commencement of the trial on October 31, 1994 (R 221; T 9-10); at this time, the Assistant Public Defender who had been serving as standby counsel observed that he had not seen anything about Hill's conduct or behavior which would warrant not allowing him to represent himself (T 11). At the beginning of proceedings the next day, the court again inquired as to Hill's intentions, and Hill stated that he wished to represent himself (T 242-4). Although when the penalty phase commenced Hill indicated that he wished certain out-of-state counsel to substitute as his standby counsel (a request which was denied), Hill still affirmed that he wished to represent himself (T 662-71); the court continued to inquire as to Hill's intentions at the commencement of all subsequent sentencing proceedings, with Hill likewise continuing to assert his right to self-representation (R 289-90; 319-20).

On appeal to the Supreme Court of Florida, Hill's appellate counsel specifically contended, *inter alia*, that the trial court had conducted an insufficient inquiry under Faretta and Fla.R.Crim.P. 3.111(d), and had failed to advise Hill of the difficulty and complexity of presenting a defense of justification, *see infra*. The state supreme court rejected such contentions after a detailed analysis. Hill, 688 So.2d at 903-5 [Pet. App. at A5-8]. The court expressly found that the trial judge had "conducted an exhaustive inquiry before concluding that Hill's waiver was valid," making sure "that Hill knew the State would seek the death penalty" and "that Hill understood he would be in jail and therefore unable to prepare as well as counsel could on his behalf." Hill, 688 So.2d at 904 [Pet. App. at A6). The court likewise noted that the judge had

specifically explained to Hill that he should not expect any special help simply because he was representing himself, that he "would be treated the same as an attorney," and the legal system had its own terms of art and procedure that would be unfamiliar to a layperson. The court concluded that Hill "was adequately warned of the dangers and disadvantages of self-representation as required by Faretta." Id.

The court likewise held that the trial court had inquired as to Hill's age, education and experience, as well as his physical and mental health; in a footnote, the court found that any mental health evaluation would have been futile, and stated that the record demonstrated that Hill's mental condition did not effect his ability to make an intelligent and understanding choice to waive his right to counsel. Hill, 688 So.2d at 904, n.1 [Pet. App. at A7]. The court likewise held:

> As to the nature and complexity of the case, there is nothing particularly complex about the defense of justification or necessity that would lead us to conclude that Hill was unable to make a fully intelligent and understanding choice to waive counsel under rule 3.111(d). In any event, the prosecutor specifically explained to Hill that he might be thwarted in his efforts to present a defense if he could not properly lay a foundation. Nor does the fact that this is a death penalty case make it so complex that a defendant cannot make an intelligent choice to represent him or herself. It was sufficient that the judge made sure that Hill knew the State would be seeking the death penalty.

Id. [Pet. App. at A7-8].

Citing to this Court's decision in Godinez v. Moran, 509 U.S. 389, 399 (1993), the Florida Supreme Court concluded:

> In sum, we conclude that the inquiry in this case complied with both *Faretta* and rule 3.111(d). We emphasize that a defendant does not need to possess the technical legal knowledge of an attorney before being permitted to proceed pro se. As the Supreme Court stated in *Godinez v. Moran*, 509 U.S. 389, 399, 113 S.Ct. 2680, 2686-87, 125 L.Ed.2d 321 (1993), 'the competence that is required of a defendant seeking to waive his right to counsel is the competence to *waive the right*, not the competence to represent himself.' Thus, the judge was not required to give Hill a lesson on how to try a lawsuit before finding that Hill was making a knowing waiver of his right to counsel. It was enough for Hill to be alerted generally to the difficulties of navigating the legal system, and in this case the inquiry went beyond the minimum requirements to warn Hill of the particular difficulty of laying a predicate for a defense. (Footnote omitted).

Hill, 688 So.2d at 905 [Pet. App. at A8].

In the footnote, the state court expressly found, based upon the record, that the safeguards of Faretta had been extended at every stage in the proceedings. Hill, 688 So.2d at 905, n.2 [Pet. App. at A8-9].

(ii) The "Necessity/Justification" Point

Prior to trial, the State filed a motion in limine to preclude Hill from seeking to raise any defense of "necessity" or "justification," based upon his views on abortion, stating that such defense could not be raised as a defense to the criminal acts which he had committed to prevent constitutionally-protected activities; the prosecution filed a memorandum of law in support of its motion, expressly citing to this Court's decision, United States v. Bailey, 444 U.S. 394 (1979) (R 114-16; 201-07). Hill filed a lengthy motion in opposition to the State's pleading, contending, *inter alia*, that the jury should be allowed to determine not only the facts in controversy, but also the law to be applied (R 117-200). The motion was called up for a hearing on October 24, 1994, and granted on such date. During the course of the trial, Hill stated, when the time came for the presentation of the defense case, that he wished to present the defense "which he had offered to the court earlier." The state trial judge indicated that he would abide by his prior ruling (T 566).

On appeal, Hill's counsel maintained that it had been error for the court to have granted the State's motion, in that Hill was entitled to present his views on abortion in support of the statutory defense of "use of force in defense of person," pursuant to §776.012, Fla.Stat. (1993). While finding no Florida precedent to be specifically on point, the state supreme court found the out-of-state caselaw cited by the State to be persuasive, holding:

> The State cites no Florida appellate court that has ruled on the subject of whether the defense of necessity or justification, whether it be common law or statutory, is available to a defendant whose crime was committed in

opposition to abortion. However, the law outside this state, of which there is a significant body, is virtually unanimous on the subject. (Footnote omitted). In every appellate court found to have considered the issue, the defendants were precluded as a matter of law from asserting necessity or justification as a defense to trespass violations committed in protest of abortion. For example, in *City of Wichita v. Tilson*, 253 Kan. 285, 855 P.2d 911, *cert. denied*, 510 U.S. 976, 114 S.Ct. 468, 126 L.Ed.2d 420 (1993), one of the more recent cases on the subject, the Kansas Supreme Court opined:

> Regardless of what name is attached to the defense (and for the sake of simplicity we will refer to it as the necessity defense) one thing is clear: The harm or evil which a defendant, who asserts the necessity defense, seeks to prevent must be a legal harm or evil as opposed to a moral or ethical belief of the individual defendant.
>
> . . . .
>
> The courts have invoked several different rationales in rejecting application of the defense. The majority of courts reason that because abortion is a lawful, constitutionally protected act, it

> is not a legally recognized harm which can justify illegal conduct.
>
> *Id.* 855 P.2d at 914-16. We agree with *Tilson* and other cases holding that, as a matter of law, legal abortion is not a recognized harm and cannot be used to invoke the necessity defense. *See Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); §390.001, Fla.Stat. (1993). For the same reason, abortion also cannot constitute 'harm' under section 776.012. (Footnote omitted).

Hill, 688 So.2d at 905-06 [Pet. App. at A11-13].

Citing to Commonwealth v. Wall, 372 Pa.Sup. 534, 539 A.2d 1325, appeal denied, 521 Pa. 604, 555 A.2d 114 (1988), the Florida Supreme Court noted that to accept Hill's argument would be tantamount to judicially sanctioning vigilantism, and concluded that denial of Hill's motion in limine had not been error. Hill, 688 So.2d at 906 [Pet. App. at A13-A14].

REASONS FOR DENYING THE WRIT

I. IN THAT JURISDICTION DOES NOT EXIST, THIS COURT SHOULD DISMISS THE INSTANT PETITION FOR WRIT OF CERTIORARI

Before proceeding to the merits of any of the claims asserted in the instant petition, Respondent initially contends that this Court lacks jurisdiction. On June 10, 1997, Paul Hill wrote to this Court and specifically stated that he did not authorize the filing of any petition for writ of certiorari in this

cause, expressly disavowing such; this letter was filed on June 23, 1997, and supplied to the undersigned on June 27, 1997.

Because Paul Hill has not authorized the instant petition, it would appear that his former appellate counsel, who has filed the petition, is seeking to proceed as Hill's "next friend." This Court has previously not afforded standing to an attorney who wishes to pursue relief without his client's consent. See, e.g., Hammett v. Texas, 448 U.S. 725 (1980) (petition for writ of certiorari, filed by petitioner's attorney, dismissed upon request of petitioner himself, where inmate sentenced to death voluntarily waived further relief); Lenhard v. Wolff, 444 U.S. 807 (1979) (application for stay of execution, filed by petitioner's attorney without his consent, denied). There has never been any allegation that Paul Hill is not mentally competent, and it is his right to decide whether or not to petition this Court for certiorari. He has chosen no to do so, and his attorney lacks standing to maintain an action which he has not authorized. Accordingly, the instant petition should be dismissed.

II. ASSUMING THAT JURISDICTION EXISTS, THIS COURT SHOULD DENY CERTIORARI TO REVIEW THE DECISION OF THE SUPREME COURT OF FLORIDA BELOW, IN THAT THE COURT RESOLVED THE CLAIM ASSERTED IN REGARD TO SELF-REPRESENTATION IN ACCORDANCE WITH THIS COURT'S PRECEDENTS

Assuming that jurisdiction is perceived, Hill's counsel has nevertheless entirely failed to demonstrate any basis for this Court to review the decision of the Florida Supreme Court. Although opposing counsel proclaims that the state supreme

court "emasculated" this Court's decision, Faretta v. California, 422 U.S. 806 (1975), and that the decision below constitutes "a dramatic, graphic, illegal change in the law," which will be cited for the proposition that waiver of a defendant's Sixth Amendment rights "is a mechanical act" (Petition at 17), the simple truth is that the Florida Supreme Court's opinion in the Hill case is entirely consistent with all this Court's precedents. Further, to the extent that Hill's counsel contends that the decision below is inconsistent with Florida's own Rules of Criminal Procedure (Petition at 17-27), such cannot constitute any basis for this Court's review. See, e.g., Michigan v. Long, 463 U.S. 1032, 1041 (1983); Fisher v. United States, 328 U.S. 463, 476-7 (1946). The instant petition should be denied in all respects.

The primary contention raised by Hill's counsel - that Hill was not sufficiently apprised of the "complexity" of the case, so as to be able to make a knowing and intelligent waiver of counsel - is refuted by the record. As the Florida Supreme Court expressly found, the state trial judge conducted an "exhaustive" inquiry into all relevant matters before accepting Hill's waiver of counsel; this inquiry, and waiver, was repeated at every critical stage in the proceedings. Thus, the court noted that Hill had repeatedly been advised that he faced the death penalty and, further, that he faced a number of disadvantages in representing himself. The state supreme court noted that the prosecutor himself had told Hill that he might be thwarted in his efforts to present a defense if he could not properly lay a foundation. Hill, 688 So.2d at 904 [Pet. App. at A7-8]. The state supreme court was correct in concluding that there was nothing particular complex about the prosecution at hand, and that the state trial judge was not required, under Faretta or Godinez v. Moran, 509 U.S. 389 (1993), to "give Hill a lesson on how to try a lawsuit" before finding that Hill could waive counsel. Hill, 688 So.2d at 905 [Pet. App. at A8]. The

hyperbole of Hill's counsel, to the effect that the opinion below can be read to approve a "mechanical act", has no support in the record or in any of this Court's precedents.

Despite opposing counsel's reliance upon Faretta, his primary complaint would not seem to be so much focused upon the sufficiency of the inquiry conducted, but rather upon the results of the trial. Thus, opposing counsel posits that Faretta was violated because, in his view, Hill was wrongfully precluded from presenting a defense of "necessity/justification," and because Hill's alleged "nonparticipation" in his case "amounted to a plea of guilty." (Petition at 26). As will be argued *infra*, however, Hill's *pro se* status had nothing to do with his lack of success in maintaining a "necessity/justification" defense, in that, such "defense" would not have been recognized by any court of law, under the circumstances of this case, even had an armada of attorneys been present. As to Hill's alleged "nonparticipation" in the case, such was his choice, just as it was his choice to waive counsel. While it is unquestionable that an attorney could have handled the case in a different manner, any such observation rooted in either hindsight or paternalism is not properly the focus of a Faretta analysis, either at trial or on appeal. The record in this case fairly indicates only one conclusion - that Paul Hill knowingly and intelligently waived his right to counsel. The instant petition for writ of certiorari should be denied in all respects.

III. ASSUMING THAT JURISDICTION EXISTS, THIS COURT SHOULD DENY CERTIORARI TO REVIEW THE DECISION OF THE SUPREME COURT OF FLORIDA BELOW, IN THAT THE COURT RESOLVED THE CLAIM ASSERTED IN REGARD TO THE DEFENSES OF "NECESSITY" OR "JUSTIFICATION" IN ACCORD WITH THE PRECEDENTS OF THIS COURT, AS WELL AS ALL OTHER COURTS TO CONSIDER THE MATTER

Paul Hill murdered two persons in cold blood, and attempted to kill a third. The victims in this case were a physician who performed abortions, and an elderly couple who volunteered to "escort" those engaged in such activity. In the trial court below, the state moved to preclude Hill from asserting any defense of "necessity" or "justification", under §776.012, Fla.Stat. (1993), allegedly premised upon Hill's views of abortion, and such motion was granted; this ruling was upheld by the Supreme Court of Florida on appeal. Hill, 688 So.2d at 905-6 [Pet. App. at A9-14]. In the instant petition for writ of certiorari, Hill's counsel essentially re-presents the same argument rejected by the state courts, and also sets forth, in a six-page footnote (Petition at 19-25), the alleged predicate steps which would be necessary for the preparation and presentation of such defense.

No valid basis for certiorari has been presented. The Florida Supreme Court surveyed the law nationwide, and concluded, in accordance with all other jurisdictions, that any defense of "necessity" or "justification" was simply inapplicable to offenses of this kind. Hill's counsel presents absolutely no argument to the contrary, and cites to no court which has ever authorized such a defense in regard to crimes

comparable to those committed by Hill. As the Florida Supreme Court recognized, courts throughout the nation have held that legal abortion is not a recognized "harm", see Hill, 688 So.2d at 906 [Pet. App. at A12], and that, hence, Hill did not choose the "lesser" of two evils, when he murdered the instant victims. Likewise, the Florida Supreme Court joined other state courts in finding that to permit a defendant to vindicate his or her criminal activity in such a manner would be an invitation to lawlessness, and "tantamount to judicially sanctioning vigilantism." Id. [Pet. App. at A13]. The Florida Supreme Court's resolution of this matter was entirely consistent with this Court's precedent, United States v. Bailey, 444 U.S. 394 (1979), and the massive discovery discussed by Hill's counsel (Petition at 19-25), would stand no chance of changing this result. It should be noted that, in his federal prosecution, Hill in fact was allowed to call witnesses including the administrator of the abortion clinic, in this case, and the only testimony that was presented at such time was to the effect that all abortions performed at the clinic involved those in the first trimester. See United States v. Hill, 893 F.Supp. 1048, 1049-1050 (N.D. Fla. 1994). Accordingly, no pretense of justification existed.

To the extent that Hill's counsel also attacks Hill's sentences of death, such attack is likewise fruitless. As the Florida Supreme Court expressly recognized, the State's motion in limine was directed only towards the guilt portion of the trial, and no prohibition existed in regard to Hill's ability to present any matters, including his views on abortion, to the sentencing jury at the penalty phase. In fact, Hill did present a closing argument to his sentencing jury, setting forth his views on abortion, and such is quoted in the opinion below. Hill, 688 So.2d at 907 [Pet. App. at A16]. As the state supreme court found, "There is no question that the jury was aware that he killed his victims in order to prevent them from

performing abortions." Id. Hill's views, however, did not preclude the sentencing judge from properly finding that the homicides had been committed in a cold and calculated manner, under §921.141(5)(i), Fla.Stat. (1993), without a pretense of moral or legal justification, and the Florida Supreme Court likewise properly affirmed the finding of this aggravating circumstance, in accordance with its own prior precedent. See Dougan v. State, 595 So.2d 1 (Fla.), cert. denied, 506 U.S. 942 (1992). Id. While it is true that one of the seven justices dissented as to the finding of this aggravating factor, even that jurist did not contend that the death sentences should be vacated as a result, and other aggravation existed to support Hill's two capital sentences. No basis for invocation of this Court's certiorari jurisdiction has been demonstrated, and the instant petition should be denied in all respects.

CONCLUSION

WHEREFORE, for the aforementioned reasons, the instant petition for writ of certiorari should be dismissed and/or denied in all respects.

Respectfully submitted,

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